

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION TWENTY-FIVE

Indianapolis, IN

ELSA, LLC<sup>1</sup>

Employer

and

Case 25-RC-10281

INTERNATIONAL UNION, UNITED  
AUTOMOBILE, AEROSPACE AND  
AGRICULTURAL IMPLEMENT WORKERS  
OF AMERICA, UAW  
Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held on June 2, 2005, before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board, to determine an appropriate unit for collective bargaining.<sup>2</sup>

I. ISSUES

The International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW (herein referred to as the “Petitioner” or the “Union”) seeks an election in a unit comprised of production technicians, maintenance technicians, and quality assurance (“QA”) technicians employed by Elsa, LLC (herein referred to as “Elsa” or the “Employer”) at its Elwood, Indiana, facility. The Employer asserts that any appropriate unit must also include crew leaders and Kaizen employees, as they share a community of interest

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<sup>1</sup> The name of the Employer appears as stipulated by the parties.

<sup>2</sup> Upon the entire record in this proceeding, the undersigned finds:

- a. The hearing officer’s rulings made at the hearing are free from error and are hereby affirmed.
- b. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
- c. The labor organization involved claims to represent certain employees of the Employer.
- d. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

with unit members. The Petitioner contends, however, that crew leaders are supervisors within the meaning of Section 2(11) of the Act and therefore must be excluded from the unit. The Petitioner also maintains that Kaizen employees must be excluded from the unit because they do not share a sufficient community of interest with the unit members.

## II. DECISION

For the reasons discussed in detail below, it is concluded that the record fails to establish that the crew leaders are statutory supervisors. Therefore, as they share a substantial community of interest with the bargaining unit members, they shall be included in the unit found appropriate herein. It is also concluded that, based on their interaction with the bargaining unit, integration with the production process, and common supervision, the Kaizen employees share a substantial community of interest with unit employees and shall therefore be included in the unit found appropriate herein.

The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time production technicians, maintenance technicians, quality assurance technicians, shipping and receiving clerks,<sup>3</sup> Kaizen employees, and crew leaders employed by Elsa, LLC, at its Elwood, Indiana, facility; BUT EXCLUDING all support technicians, group leaders, quality assurance engineer technicians, clerical employees, guards and supervisors<sup>4</sup> as defined in the Act, and all other employees.

The unit found appropriate herein consists of approximately 351 employees for whom no history of collective bargaining exists.

## III. STATEMENT OF FACTS

The Employer operates an automotive component factory in Elwood, Indiana, and is primarily engaged in the production of fuel tanks and exhaust systems for several different automobile manufacturers. The Employer runs a three shift operation. The Elwood facility is basically a large, warehouse-type structure with a number of different production lines, forty or fifty, located throughout the facility. There are several offices around the edge of the production lines, including a welding training area, and a press room at the back of the building. All

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<sup>3</sup> After the close of the hearing, the parties reached a joint stipulation that the shipping and receiving clerks should be included in any unit found appropriate herein. Based on this stipulation the undersigned shall include the shipping and receiving clerks in the appropriate bargaining unit.

<sup>4</sup> The parties stipulated at the opening of the hearing that the employees in following classifications are supervisors within the meaning of Section 2(11) of the Act because they possess one or more of the indicia enumerated in Section 2(11): group leaders, managers, vice presidents, and presidents.

employees share common lunch and break areas, and all employees wear the same type of uniform.

Each of the forty or fifty production lines produces a specific product. Some lines are manned by only one or two production technicians, while other lines have as many as twenty technicians. Each line has a crew leader assigned to it, although each crew leader may be assigned to more than one line. Group leaders are responsible for overseeing all of the production on their assigned lines, and those group leaders report to an operations manager for their area. The operations managers report to Henry James, the director of production. The Employer also has a maintenance department that repairs the machinery and Kaizen employees that work to ensure continuous improvement at the facility. Both the maintenance technicians and the Kaizen employees report to the maintenance manager.

#### A. Crew Leaders

At its Elwood facility, the Employer employs approximately twenty-eight crew leaders. The crew leaders are assigned to cover one or more of the production lines at the facility. Crew leaders report to the group leaders, as do the other production technicians who work on the production lines. The role of the crew leader is to serve as the assistant to the group leader, to oversee production and ensure that the group leader's production schedule is met. As part of that process, the group leaders meet with their assigned crew leaders at the start of each shift in order to inform them of the planned production. Most crew leaders arrive to work a few minutes before the production technicians in order to get the line started and run a few test parts before production is actually scheduled to begin.

Crew leaders spend most, if not all, of their shift working on the floor at one of the production lines, while the group leaders typically spend very little time per day at any one production line. Thus, the evidence demonstrates that one of the primary duties of the crew leaders is to communicate instructions, including job assignments and the production schedule, from the group leader to the production technicians. The reverse is also true, with the crew leader communicating issues and concerns on the production floor to the group leader for resolution or action. Requests for leave brought by production technicians to the crew leaders are forwarded to the group leader and the final decision regarding the approval of leave is left to the group leader. At the start of the shift, crew leaders notify the group leader if an employee is absent so that a replacement can be found. On many occasions the crew leader is instructed to fill the vacant position. Although it is not always the case, a crew leader may spend as much as 60% of their time actually performing production technician tasks if a replacement employee cannot be found. There is little, if any, evidence that crew leaders play any role in the transfer of employees between production lines. Rather, at most a crew leader may assign a different task (such as clean-up) to a production technician if the production line is down for a certain period of time, but such assignments are based upon standing instructions that are issued by the group leader.

It is also the crew leaders' responsibility to assist production technicians should a production problem occur, such as a break down in machinery. The crew leader has generally been instructed by the group leader regarding how much time to attempt to resolve the problem.

After the expiration of that time the crew leader must notify the group leader who will determine the next step in order to ensure that production is maintained. In a group leader's absence, a crew leader may be placed in charge of a line, but the production schedule and any decisions that must be made have either already been made by the group leader prior to their absence or will be made by the operations manager.

Most of the crew leaders are selected from the ranks of production technicians and are promoted based upon their maintenance skills and knowledge of the production process. Currently, the pay range for a crew leader is \$13.80 to \$14.55 per hour, while production technicians make between \$10.20 and \$13.65 per hour, quality assurance technicians earn between \$13.65 and \$14.80 per hour, and maintenance technicians make between \$13.80 and \$16.65 per hour. Group leaders are salaried. Crew leaders are eligible for the same benefits package as production technicians and other employees. Crew leaders and production technicians are also subject to the same company policies. Further, crew leaders are included within the scope of the Employer's Peer Grievance Review process, along with production technicians, quality assurance technicians, and maintenance technicians, while group leaders and other undisputed supervisors are excluded from the process.

#### B. Kaizen Employees

The Employer has nine Kaizen employees working at its Elwood facility.<sup>5</sup> The Kaizen employees are focused on improving the Employer's production process, either through efficiency, scrap reduction, or ergonomics. Part of their job involves undertaking specific projects, such as a time study of a particular production line, and devising an improved method of production. The Kaizen employees are otherwise basically "on call" at all times and respond to questions or concerns from production technicians, crew leaders, or group leaders on a daily basis. These types of concerns, which take precedence over other projects, may require the Kaizen employee to visit the production line and assist a requesting production technician in resolving a particular problem. Kaizen employees have two office areas, with some stationed in the welding training area, and others located in the back of the facility.

Kaizen employees are promoted from the ranks of the production technicians and most, if not all, of the current Kaizen employees were formerly production technicians. The Kaizen employees are promoted based upon their production or technical skills, and they receive no special training to become a Kaizen employee. Many of the Kaizen employees have a particular specialty, usually based upon their skills (such as welding) and they will focus their work in that particular skill set. In addition, Kaizen employees may provide training to other employees based on the particular skill of the Kaizen employee. Some Kaizen employees receive additional, specialized training, when available, in order to expand their area of expertise and assist the Employer. There are also two Kaizen employees who serve on Elsa's QSR team, which studies a specific production line for six months at a time to help improve the line.

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<sup>5</sup> "Kaizen" is a Japanese term that roughly translates as "continuous improvement." The Employer has adapted the term to create a specific job classification which they call "Kaizen."

The record does not reflect the wage scale of the Kaizen employees, who are paid on an hourly basis, or how their scale compares to the wages paid to the other members of the bargaining unit. However, they do receive the same benefits as production technicians and other employees, with the exception of the attendance policy, under which Kaizen employees can choose whether they want to participate in the paid time off or points attendance systems. Kaizen employees have the same allotted time for breaks and lunch as the production technicians, but the breaks and lunch are not scheduled the way they are for production technicians. They are also eligible to participate in the Employer's Peer Grievance Review process along with the other bargaining unit employees. Kaizen employees, as well as maintenance technicians, report to the maintenance manager.

#### IV. ANALYSIS

##### A. Crew Leaders

The Petitioner asserts that the Employer's crew leaders are supervisors within the meaning of the Act. The Employer counters that the crew leaders are not supervisors, but instead share a community of interest with the remainder of the bargaining unit, and therefore should be included in any unit found appropriate.

To determine whether an individual is a supervisor within the meaning of Section 2(11) of the Act, the Board examines: (1) whether the individual has the authority to engage in any one of the twelve enumerated powers listed in Section 2(11) of the Act and (2) whether the exercise of such authority requires the use of independent judgment. NLRB v. Kentucky River Community Care, 532 U.S. 706 (2001); NLRB v. Health Care & Retirement Corp., 511 U.S. 571, 573-574 (1994). The twelve powers set forth in the definition of a supervisor in Section 2(11) of the Act are the authority to "hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees or responsibly direct them, or to adjust their grievances, or effectively recommend such action."

The burden of proof regarding an individual's supervisory status rests upon the party alleging that an individual is a supervisor. Kentucky River, 532 U.S. 706 (2001); Bennett Industries, 313 NLRB 1363 (1994). A lack of evidence is construed against the party asserting supervisory status. The Board is reluctant to confer supervisory status too broadly because an employee deemed to be a supervisor loses the protection of the Act. Vencor Hospital—Los Angeles, 328 NLRB 1136, 1138 (1999). The Board has found that a particular indicia of supervisory status has not been established if the evidence is in conflict or otherwise inconclusive regarding that indicia. Phelps Community Medical Center, 295 NLRB 486, 490 (1989). Mere inferences or conclusionary statements without detailed, specific evidence of independent judgment are insufficient to establish supervisor authority. Sears Roebuck & Co., 304 NLRB 193 (1991).

As the party seeking to exclude the crew leaders as Section 2(11) supervisors, the burden is upon Petitioner to prove that they perform one of the supervisory indicia. Here, the record is insufficient to demonstrate that the crew leaders possess any of the supervisory indicia, and Petitioner has therefore failed to carry its burden. Several witnesses provided testimony

indicating that crew leaders did not possess any of the Section 2(11) indicia. Other witnesses indicated that crew leaders may have the authority to assign work, to transfer employees, or to discipline employees. Certainly the crew leaders are an intermediary between the production technicians and the group leaders and are often the first point of contact for a production technician with an issue. But when a production technician presents a leave request to a crew leader, for example, the evidence demonstrates that the crew leader cannot make a determination on the leave request, but rather simply passes the employee's request on to the group leader, who possesses the authority to approve or deny the leave request.

It is clear that such actions by the crew leaders as assigning work to production technicians or transferring production technicians to a different production line (such as during a stop in production) do not involve the exercise of independent judgment by the crew leaders. Rather, when the crew leaders are "assigning" work to the production technicians on their line, the evidence demonstrates that the crew leaders are doing nothing more than communicating prior decisions made by the group leaders to the production technicians. Similarly, when the production line is down and a crew leader asks a production technician to perform preventative maintenance or clean-up, such actions do not involve the exercise of independent judgment by the crew leader, but instead involve the crew leader following standing instructions that have been previously issued by the group leader. Also, when a machine is broken, the crew leader may attempt to fix the machine for a set period of time (typically no more than ten minutes) but then must notify the group leader of the down time and the need for further action. Any such further action is determined by the group leader.

As for disciplinary authority, it is clear from the record that crew leaders do not play any role in the disciplinary process, other than to merely report potential misconduct to a group leader who then must conduct an independent investigation. For example, the record reflects that when a crew leader reported to his group leader that he witnessed an employee asleep on the line, no action was taken against the employee because the group leader was unable to confirm that the employee was sleeping. Petitioner presented some evidence at hearing that the production technicians consider their crew leader to be in charge and therefore Petitioner argues that crew leaders should be found to be supervisors. However, little weight need be given to the perceptions of employees, particularly when there is only vague testimony that employees consider the crew leaders to be in charge and there is no other evidence that crew leaders possess any of criteria enumerated in Section 2(11) of the Act. NLRB v. Yuba National Resources, Inc., 824 F.2d 706 (9th Cir. 1987).

Based upon the evidence described above, it is concluded that crew leaders are not supervisors within the meaning of Section 2(11) of the Act. The Petitioner does not contend that, in the absence of a finding of supervisory status, the crew leaders should be excluded from the unit because of a lack of community of interest with unit employees. In addition, the record establishes that crew leaders do share a sufficient community of interest with unit employees to require their inclusion in the appropriate bargaining unit. The crew leaders and production technicians share common supervision; work similar hours; receive the same fringe benefits; and are subject to the same personnel policies. While they have wages that are slightly higher than the production technicians, they are well within the range that is earned by other members of the bargaining unit such as quality assurance technicians and the maintenance technicians. Crew

leaders spend their entire shift out on the production floor, working with other production technicians, and often filling in for those same technicians. Crew leaders are also hired out of the ranks of the production technicians and are promoted based upon their technician skills and knowledge of the production process. Based upon their close connection to the bargaining unit and the integral role they play in the production process, the undersigned finds that crew leaders share a sufficient community of interest with bargaining unit employees to require their inclusion in the unit.

#### B. Kaizen Employees

The Petitioner seeks to exclude the Kaizen employees from the bargaining unit, stating they do not share a community of interest with the rest of the bargaining unit. The Employer argues that Kaizen employees do share a community of interest with the unit and that they therefore should be included.

The Act allows a union to petition for an appropriate unit. This does not necessarily mean that the unit will be the most appropriate or that there might not be others more appropriate. J.C. Penney Company, Inc., 328 NLRB 766 (1999); The Phoenician, 308 NLRB 826 (1992). In determining an appropriate unit, the ultimate question is whether the employees share a sufficient community of interest to require their joinder within one unit. J.C. Penney Company, Inc., supra; The Phoenician, supra; Alley Drywall, Inc., 333 NLRB 1005 (2001) citing Alois Box Co., 326 NLRB 1177 (1998); Washington Palm, Inc., 314 NLRB 1122, 1127 (1994). In making such a determination the Board weighs a variety of factors, including similarities in wages or method of compensation; similar hours of work; similar employment benefits; similar supervision; the degree of similar or dissimilar qualifications, training, and skills; similarities in job functions; the amount of working time spent away from the facility; the integration of work functions; the degree of interchange between employees as well as the degree of employee contact; and the history of bargaining. NLRB v. Action Automotive, Inc., 469 U.S. 490, 494-97; Kalamazoo Paper Box Corp., 136 NLRB 134, 137 (1962).

In analyzing these various community of interest factors, it is clear in the present case that the Kaizen employees share a strong community of interest with the bargaining unit found appropriate herein, and they must therefore be included in such a unit. The Kaizen employees share common supervision with the maintenance technicians, which the Petitioner seeks to include in the bargaining unit. As the Board has regularly found, common daily supervision has a greater impact upon the creation of a community of interest than other factors because it has a direct impact upon employees' work lives, and employees with different supervisors may not necessarily share similar problems or concerns. D & L Transportation, Inc., 324 NLRB 160 (1997); Towne Ford Sales, 270 NLRB 311 (1984).

Further, most if not all of the Kaizen employees are promoted from the ranks of the production technicians based upon their skills. Thus, the Kaizen employees have similar qualifications, training, and skills as other members of the bargaining unit. Kaizen employees also have almost daily interaction with the production technicians and crew leaders, who are included in the bargaining unit, and the main purpose of the Kaizen employees is to improve the efficiencies and ergonomics of the production technicians. Although the record does not indicate

the wage rates of the Kaizen employees, they are paid on an hourly basis as are the other bargaining unit employees. The record is also not clear on exactly what the hours of the Kaizen employees are vis-à-vis the production technicians, maintenance technicians, or other included classifications, but it is clear from the record that the Kaizen employees do spend the majority of their time working at the same times as the other bargaining unit members since so much of the Kaizen employees' work involves interaction with the production technicians.

Based on the foregoing and the record evidence, it is concluded that the Kaizen employees share such a strong community of interest with the employees in the unit found appropriate that their inclusion is required.

#### V. DIRECTION OF ELECTION<sup>6</sup>

An election by secret ballot shall be conducted by the undersigned, among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Those in the unit who are in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are former unit employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW.

#### VI. NOTICES OF ELECTION

Please be advised that the Board has adopted a rule requiring that election notices be posted by the Employer at least three working days prior to an election. If the Employer has not received the notice of election at least five working days prior to the election date, please contact the Board Agent assigned to the case or the election clerk.

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<sup>6</sup> At the close of the hearing, Petitioner indicated that it was not willing to proceed to an election if the undersigned found a different unit than the one petitioned for to be appropriate. However, after the close of the hearing Petitioner filed a motion to reopen the record and also stated its willingness to proceed to an election in an alternate unit. The motion to reopen the record is hereby denied. Given the Petitioner's newly stated position regarding proceeding to an election, the undersigned orders an election in the alternate unit found appropriate herein.



A party shall be estopped from objecting to the non-posting of notices if it is responsible for the non-posting. An employer shall be deemed to have received copies of the election notices unless it notifies the Regional office at least five working days prior to 12:01 a.m. of the day of the election that it has not received the notices. Club Demonstration Services, 317 NLRB 349 (1995). Failure of the Employer to comply with these posting rules shall be grounds for setting aside the election whenever proper objections are filed.

## VII. LIST OF VOTERS

To insure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Co., 394 U.S. 759 (1969). Accordingly, it is directed that 2 copies of an eligibility list containing the full names and addresses of all the eligible voters must be filed by the Employer with the undersigned within 7 days from the date of this Decision. North Macon Health Care Facility, 315 NLRB 359 (1994). The undersigned shall make this list available to all parties to the election. In order to be timely filed, such list must be received in Region 25's Office, Room 238, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Indianapolis, Indiana 46204-1577, on or before **June 24, 2005**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

## VIII. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099-14th Street. N.W., Washington, DC 20570. This request must be received by the Board in Washington by July 1, 2005.

SIGNED at Indianapolis, Indiana, this 17<sup>th</sup> day of June, 2005.

/s/ Richard J. Simon

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